



State of Utah

GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

Department of  
Environmental Quality

L. Scott Baird  
*Interim Executive Director*

DIVISION OF WATER QUALITY  
Erica Brown Gaddis, PhD  
*Director*

**CERTIFIED MAIL**  
**(Return Receipt Requested)**

September 3, 2019

Mr. B. Kirk Nicholes, Environmental Specialist  
Alton Coal Development, LLC  
Cedar City, Utah 84720

Subject: **Notice of Violation Docket No. I19-09**  
Alton Coal Development, LLC  
UPDES Permit No. UT0025992

Dear Mr. Nicholes:

Enclosed is a Notice of Violation and Compliance Order (Order) issued to Alton Coal Development, LLC, by the Division of Water Quality, for your immediate attention. This Order has been issued as a result of TDS effluent violations at the above referenced facility.

If you have any questions regarding this Order or the information contained therein, please contact either Lonnie Shull or Jeff Studenka of this office, (801) 536-4300.

Sincerely,

Erica Brown Gaddis, PhD  
Director

EG/LS/JS/ch

Enclosure: 1. Notice of Violation (DWQ-2019-011464)

cc: Meg Osswald, Office of Attorney General  
Jeremy Roberts, Southwest Utah Public Health Department  
Paul Wright, DEQ District Engineer  
Steve Christensen, DOGM Permit Supervisor

DWQ-2019-011017



**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WATER QUALITY**

**In the Matter of:**

**ALTON COAL DEVELOPMENT, LLC  
463 North 100 West, Suite 1  
Cedar City, Utah 84720**

**NOTICE OF VIOLATION  
AND COMPLIANCE ORDER  
DOCKET NO. I19-09**

This Notice of Violation and Compliance Order (NOV/CO) is issued to Alton Coal Development, LLC (Alton Coal) in its capacity as Operator of the Coal Hollow Project Facility based upon the Facts and Determinations asserted herein. This NOV/CO is issued by the Director of the Utah Division of Water Quality (Director) pursuant to the Director's authority under the Utah Water Quality Act, as amended, Utah Code. Sections 19-5-101 to 19-5-124 (the Act). This NOV/CO is also issued in accordance with the administrative procedures of the Utah Department of Environmental Quality, Utah Administrative Code R305-7 *et. seq.*

**A. STATUTORY AUTHORITY**

1. The State of Utah's surface water quality programs as adopted in the Utah Water Quality Act by the Utah Legislature operate with federal oversight and under delegation from the Environmental Protection Agency (EPA) under the federal Clean Water Act, 33 U.S.C. 1342.
2. The Director is authorized to issue, continue in effect, renew, revoke, modify or deny discharge permits and to issue orders under the Act and in accordance with Utah Code Section 19-5-106(2)(d) and may enforce rules made by the Board through the issuance of orders.
3. The Utah Division of Water Quality (Division) was created to administer the Act under the immediate direction and control of the Director pursuant to Utah Code Section 19-1-105.
4. The U.S. Environmental Protection Agency ("EPA") delegated authority to the State of Utah to administer the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), known in Utah as UPDES.
5. Pursuant to Utah Code Section 19-5-111, whenever the Director determines that there are reasonable grounds to believe that there has been a violation of the Act, the water quality rules, or any order of the Director or the Board, the Director may issue a notice of violation. In that event, the notice shall require that the matters complained of be corrected.

6. Utah Code Section 19-5-115 provides that any person who violates a rule or order made or issued pursuant to the Act, or any rule or order made thereunder, may be subject, in a civil proceeding, to a civil penalty of up to \$10,000 per day of violation. Higher penalties and other sanctions may arise in situations amounting to knowing or willful violations.

#### **B. APPLICABLE STATUTORY AND REGULATORY PROVISIONS**

1. Utah Code Section 19-5-107(1)(a) states: "Except as provided in the [Water Quality Act] or rules made under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any waste in a location where there is probable cause to believe it will cause pollution."
2. Utah Code Section 19-5-102(22) defines "Waste" or "pollutant" as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water."
3. Utah Code Section 19-5-102(23)(a) defines "Waters of the state" as "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state."
4. Utah Administrative Code R317-8-4.1(1)(a) requires that the permittee must comply with all conditions of the UPDES permit. Any permit noncompliance is a violation of the Utah Water Quality Act.
5. Utah Administrative Code R317-2-7.2, Narrative Standards, prohibits any person from discharging or placing any waste or other substance "in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures."

### **C. FACTS & DETERMINATIONS**

1. Alton Coal is a registered Limited Liability Company with the Utah Department of Commerce and doing business in the State of Utah.

Alton Coal was issued UPDES modified permit # UT0025992, which became effective on September 1, 2016, and originally expiring on July 31, 2018, but has been administratively extended in accordance with Utah Administrative Code R317-8-3.1(4)(d). This permit authorizes discharges from the Alton Coal Hollow Project Facility in accordance with specific limitations and conditions as explained herein.

2. Alton Coal submitted discharge monitoring report (DMR) forms to the Division in compliance with its UPDES permit # UT0025992. Nine DMRs indicate UPDES permit effluent exceedences for Total Dissolved Solids (TDS) concentration and three indicate permit effluent exceedences for TDS total load. DMR results are summarized below (**red** indicates a violation of Utah Water Quality Standards):

Monitoring Period	Outfall	Parameter	Permit Limit	Reported Measure
Month Ending	--	--	Daily Max. (mg/L)	Daily Max. (mg/L)
8/31/2018	007	TDS	1200	1400
10/31/2018	007	TDS	1200	1590
11/30/2018	007	TDS	1200	1440
1/31/2019	007	TDS	1200	1580
2/28/2019	007	TDS	1200	1460
3/31/2019	007	TDS	1200	1390
3/31/2019	005	TDS	1200	1830
5/31/2019	007	TDS	1200	1240
6/30/2019	003	TDS	1200	1520

Monitoring Period	Outfall	Parameter	Permit Limit	Reported lbs/day
8/31/2018	SUM	TDS	2000 lbs/day	2479
4/30/2019	SUM	TDS	2000 lbs/day	16377
5/31/2019	SUM	TDS	2000 lbs/day	17882

SUM = sum of all outfalls, permit limit of 1-ton/day

3. Utah Administrative Code R317-2-13. Classification of Waters of the State – Classifies the Kanab Creek and tributaries as Waters of the State.
4. Utah Administrative Code R317-2-14. Numeric Criteria – Lists numeric criteria for Waters of the State. The receiving waters are designated as follows:

Kanab Creek and tributaries - 2B, 3C and 4

Class 2B - protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.

Class 3C - protected for nongame fish and aquatic life, including the necessary aquatic organisms in their food chain.

Class 4 - protected for agricultural uses including irrigation of crops and stock watering.

5. TDS is a pollutant under Utah Code Section 19-5-102(22), which is regulated by Utah Administrative Code R317-2-4 for loading requirements within the Colorado River Basin and by Utah Administrative Code R317-2-14 for concentration limitations.
6. Utah Administrative Code R317-2-4 imposes additional protections for the Colorado River and its tributaries to further control salinity in the Utah portion of the Colorado River Basin by limiting Total Dissolved Solids according to the Colorado Salinity Forum's *"Policy for Implementation of Colorado River Salinity Standards through the NPDES Program."*
7. Because Kanab Creek flows into the Colorado River, Alton Coal's UPDES Permit requires that if it cannot achieve less than or equal to one ton per day concentration of TDS, the permittee must develop a treatment process, participate in a salinity offset program, or develop a mechanism to remove salinity/TDS.

#### **D. VIOLATIONS**

Based on the foregoing, **Alton Coal** has violated the following:

1. Utah Administrative Code R317-8-7.1(1)(a) for not complying with all conditions of UPDES permit # UT0025992, specifically the TDS concentration and loading limitation requirements in Part I.D.1 of the permit.
2. Utah Code Section 19-5-107(1)(a) for releasing "...a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial,

recreational, or other beneficial uses of water, or placing or causing to be placed any wastes in a location where there is probable cause to believe that it will cause pollution.”

#### **E. ORDER**

Based on the foregoing Facts and Determinations, and Violations and pursuant to Utah Code Sections 19-5-107 and 19-5-111, **Alton Coal** is hereby **ORDERED** to:

1. As of the date of issuance of this NOV/CO, if not already initiated, initiate all action required to come into compliance with all applicable provisions of the Utah Water Quality Act in Utah Code Title 19 Chapter 5 and the Water Quality rules in the Utah Administrative Code, R317.
2. Submit a report containing the information below. The report must be submitted to the Director within 30 days of the date of issuance of this NOV/CO and must provide the information listed below:
  - A. An evaluation of what caused the cited violations. This information should include the facts of the specific discharges outlined in the Facts and Determinations, as well as any other information regarding the discharges that may be important in resolving the violations listed in Section D of this NOV/CO.
  - B. Describe, in detail, the actions taken and/or planned to be implemented (including dates), to attain and continue to be in full compliance with this NOV/CO.
  - C. Describe, in detail, what salinity (TDS) offset program, or other type of mechanism, will be used to account for TDS loads in excess of the 1-ton per day UPDES permit limitation since August of 2018 and as needed into the future.
  - D. Describe, in detail, any environmental mitigation and restoration plans for the area affected by the discharge if any, and the expected timetables related to these plans.

#### **F. NOTICE**

Alton Coal may contest this NOV/CO by filing and serving a written Request for Agency Action as provided in Utah Administrative Code R305-7-303 and R305-7-104(5). This NOV/CO is effective upon issuance (date signed) and, even if it is contested, remains effective unless a stay is issued or the NOV/CO is rescinded, vacated or otherwise terminated.

Failure to contest this NOV/CO within the period specified in R305-7-303(5) **30 days** waives any right to contest the NOV/CO or to seek judicial review.

All reports required under this NOV/CO must be accompanied by the following certification, which is to be signed in accordance with Utah Administrative Code R317-8-3.4(4):

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."*

Utah Code Section 19-5-115 provides that violation of the Water Quality Act or a related Order may be subject to a civil penalty of up to \$10,000 per day of violation. Under certain circumstances of willfulness or gross negligence, violators may be fined up to \$25,000 per day of violation. Failure to comply with this NOV/CO may result in additional civil penalties or criminal fines under Utah Code Section 19-5-115.

Issued this Third Day of September, 2019



Erica Brown Gaddis, PhD  
Director, Division of Water Quality